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January 24, 2004

Office of the Secretary  
Federal Communications Commission  
Washington, D.C. 20554

**RE: FCC’s Localism Task Force Docket (RM-10803)**

Dear FCC Commissioners and Staff,

These days, I “wear so many hats” that I had better clarify which one I am wearing now. As a freelance Government Relations advocate, I am both President of THE AMHERST ALLIANCE and Vice President, Government Relations & Membership Development for NATIONAL ANTENNA CONSORTIUM. All of this representation is done through SCHELLHARDT ADVOCACY SERVICES, a sole proprietorship.

SCHELLHARDT ADVOCACY SERVICES *also* currently represents:

- (a) 42 parties who filed an October 25, 2002 Petition For Reconsideration, in FCC Docket 99-325, challenging the Commission’s “interim” authorization of broadcasts with In Band On Channel (IBOC) Digital Radio; *And*
- (b) 63 parties who filed a November 14, 2003 Petition For Expedited Relief, Through Rulemaking, a copy of which was formally entered Onto The Record of the FCC’s Localism Task Force Docket (RM-10803).

Today, I write on behalf of *both* groups. On behalf of the Expedited Relief Petitioners, I submit in Docket RM-10803 the text of a January 14, 2004 Editorial in RADIO WORLD. This Editorial calls for translator reforms which are broadly comparable to those sought in the Expedited Relief Petition. In addition, on behalf of the 42 Anti-IBOC Petitioners and the 63 Expedited Relief Petitioners, I submit the former group’s January 23, 2004 Reply Comments in FCC Docket 99-325. The Expedited Relief Petitioners support the Comments because their own Petition calls for limiting damage from IBOC interference.

Sincerely,

Don Schellhardt, Esquire

Attorney For The 42 Anti-IBOC Petitioners And The 63 Expedited Relief Petitioners

RW Opinion

01.14.04

**Translators: Do Better Next Time**

The recent filing window for new translators was deeply flawed.

Instead of fulfilling its role as regulator of broadcast spectrum, the FCC created a Wild, Wild West free-for-all that resulted in more than 10,000 applications for new translators. A couple of organizations filed for thousands of individual translators each.

The majority of these translator applications were mutually exclusive, tying up a huge number of valuable channels at the eternally court-challenged commission. Additionally, because only a rudimentary technical filing was required, nuisance applications with no technical merit were allowed to block legitimate proposals.

The FCC should learn from this mess and return to a system that requires applications to be technically accurate and complete before filing. Defective applications should be rejected and not allowed for re-filing in that window.

The FCC also should strictly enforce the requirement that all translators be able to receive an off-air signal from the station being translated. Translators are intended to extend the coverage of a local station; they are not intended to be used to develop a national radio network. A reasonable standard could be developed to prevent applications that proposed translating unbuilt stations (such as construction permits) or stations located many states away.

Finally, the FCC should consider a reasonable numerical limit on applications from individual stations to reduce the number of “nuisance” filings only designed to block legitimate users (and potentially extort payments). No public good is served by allowing such gamesmanship to continue; filing windows were supposed to eliminate this parasitic behavior.

Let’s hope the commission realizes the problems with the translator process and does not allow it to become a precedent for future filing windows.

**- - RW**

***Text of January 23, 2004 Reply Comments, by 42 ANTI-IBOC PETITIONERS,  
in FCC Docket 99-325:***

**UNITED STATES OF AMERICA**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

<b>In Band On Channel (IBOC)</b>	)	
<b>Digital Radio -- NAB Proposal</b>	)	<b>FCC Docket 99-325</b>
<b>For Separate IBOC Antennas</b>	)	

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**REPLY COMMENTS OF THE 42 ANTI-IBOC PETITIONERS**

These Reply Comments are submitted on behalf of the 42 parties to an October 25, 2002 Petition For Reconsideration in FCC Docket 99-325. That Petition seeks withdrawal or suspension -- pending a comprehensive review and evaluation of alternatives -- of the October 11, 2002 Order authorizing “interim” broadcasts with In Band On Channel (IBOC) Digital Radio.

15 months later, the Commission has still neither granted nor denied this Petition, or addressed it in any other manner.

The 42 Petitioners are now responding to the Commission’s request for public input on a proposal, by THE NATIONAL ASSOCIATION OF BROADCASTERS (NAB), that would allow duplicate programming on separate IBOC antennas.

*1. We second the contention made in January 12, 2004 Written Comments of David Burstein, representing himself and DM RADIO of New York City, that action on the NAB proposal for separate antennas is premature.*

Mr. Burstein and DM RADIO make an excellent case that any consideration of separate IBOC antennas should be preceded by “a proceeding to allocate the rights to broadcast”. Needless to say, such a proceeding has not been commenced or even considered, let alone concluded.

“The worst possible use” of IBOC technology, according to Mr. Burstein and DM RADIO, “is simply to rebroadcast the current stations ... The key principle is that the second broadcast station should be original and different from the programming currently on the air in that city.” The NAB proposal is, of course, completely counter to this principle.

Mr. Burstein and DM RADIO add that:

“The FCC has not yet determined the final use of this [IBOC] resource, and should not be constrained by those who are currently testing new technology.”

At a time when the FCC has formed a special LOCALISM TASK FORCE to promote localism, including diversity of local *programming*, the FCC’s adoption of the NAB’s proposal would be a step backward -- toward media consolidation and homogeneous programming.

For this reason, we are sending a copy of these Reply Comments to the FCC’s LOCALISM TASK FORCE, for inclusion in FCC Docket RM-10803.

2. *In addition to preceding a proceeding on “allocating the rights to broadcast”, consideration of the NAB proposal is premature for 4 other reasons as well.*

A. As noted earlier, the Commission has not yet acted upon the October 25, 2002 Petition For Reconsideration. Having ignored this Petition, rather than either granting or denying it, the Commission has left the Petition as “unfinished business”. Until the issues raised in the Petition have been officially, and directly, recognized and addressed -- favorably, unfavorably or through some attempted “compromise” -- those issues are legally still “Pending”. It is contrary to the Constitutional principles of “due process of law” for the FCC to simply *bypass* objections, without refuting them or even recognizing their existence, and proceed directly to other matters whose equitable resolution depends upon *first* acknowledging, and deciding, issues that were raised earlier.

B. The Commission has also failed to grant, deny or address in any other manner the April 5, 2003 Petition For Rulemaking by Leonard Kahn, P.E. of KAHN COMMUNICATIONS in New York State. This Petition brought before the Commission a proposed new Digital Radio technology -- Compatible AM Digital Radio, trademarked as CAM-D -- that reportedly avoids the AM Band interference caused by the IBOC version of Digital Radio. While the 42 Anti-IBOC Petitioners can neither confirm or deny this claim, we believe it deserves the comparative evaluation with IBOC that Mr. Kahn has requested.

It would be premature, if not irresponsible, for the Commission to move forward with further IBOC implementation when claims of a lower-interference Digital Radio alternative remain untested, and for that matter unacknowledged.

C. Except for a cursory comment in the “Interim” IBOC Approval Order of October 11, 2002, the FCC has never responded to the multi-party Request For An Environmental Impact Statement (EIS). This multi-party Request was filed on July 18, 2002. The National Environmental Policy Act of 1969 (NEPA) requires at least the preparation of an Environmental Assessment (EA) when such a Request has been made, but no such action was taken by the FCC. Further, even the cursory comment in the “Interim” IBOC Approval Order did not mention some of the issues that had been raised in the EIS Request: most notably, the environmental impact from premature disposal of more than 500 million Analog radios, due to *mandatory* shifts to IBOC radio technology.

D. The Commission has also failed to grant, deny or otherwise address an April 15, 2002 multi-party Petition For Rulemaking for *competitive consideration* of IBOC technology. The Petition seeks *comparative* testing and evaluation of IBOC alongside Eureka 147, Digital Radio Mondiale and existing Analog technologies. Today, CAM-D technology would be added to that list of alternatives to IBOC.

3. *In short: The Commission has granted “interim” authorization of IBOC broadcasts without first deciding, or even acknowledging, various request On The Record for comparative testing and evaluation of all Digital Radio alternatives (including Analog radio) and for an assessment of environmental consequences. In addition, as David Burstein and DM RADIO have recently noted On The Record, the Commission has also acted without first considering “the proper way to allocate the rights to broadcast”.*

*Having come this far without addressing -- or even acknowledging -- these matters, the Commission is now considering a second step, deeper into the thicket of permanent, comprehensive IBOC implementation.*

*We urge the Commission to take two steps back instead -- by reviewing and deciding the issues which have been raised On The Record, but totally ignored so far.*

For the reasons set forth herein, the 42 Anti-IBOC Petitioners urge the Commission to deny the NAB proposal, suspend the “interim” authorization of IBOC transmissions and address instead the 4 documents referenced above, as well as the Burstein/DM RADIO proposal for proceedings on “allocating the rights to broadcast”.

Respectfully submitted,

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